

No. 48867-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

JASON A. MCCLURE,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. ANSWERS TO ASSIGNMENT OF ERROR.....	1
II. STATEMENT OF THE CASE.....	1
III. ARGUMENT.....	1
A. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT ON EXTORTION IN THE FIRST DEGREE.	1
IV. CONCLUSION	4

TABLE OF AUTHORITIES

Cases

State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105 (1995).....	1
State v. Green, 95 Wn.2d 216, 616 P.2d 628 (1980)	1
State v. Randhawa, 133 Wn.2d 67, 941 P.2d 661 (1997)	1
State v. Stockton, 97 Wn.2d 528, 647 P.2d 21 (1982).....	2
State v. Strong, 167 Wn.2d 206, 272 P.3d 281 (2012)	3

Statutes

RCW 9A.36.070.....	3
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I. ANSWERS TO ASSIGNMENT OF ERROR

1. There was sufficient evidence, taken in the light most favorable to the State, for a reasonable trier of fact to find that the State proved the elements of Extortion in the First Degree beyond a reasonable doubt.

II. STATEMENT OF THE CASE

The Respondent generally accepts the Appellant's recitation of the facts and will make note of specific factual issues as they arise during the course of argument.

III. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT ON EXTORTION IN THE FIRST DEGREE

There was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that Appellant committed the crime of Extortion in the First Degree. The standard of review for a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Randhawa*, 133 Wn.2d 67, 74, 941 P.2d 661 (1997), citing *State v. Green*, 95 Wn.2d 216, 221, 616 P.2d 628 (1980). When the Appellant challenges the sufficiency of the evidence, they admit "the truth of the State's evidence and all inferences that can reasonably be drawn from that evidence." *State v. Gentry*, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). This is an intentionally generous standard, emphasizing that deference that

should be shown to a jury verdict. There was sufficient evidence presented that a rational trier of fact could have found that McClure extorted Mr. Williams.

McClure threatened Mr. Williams to avoid having to pay for damages, pay for removal of property, and pay rent already owed. Defense counsel in his closing statement specifically acknowledged what the testimony had implied, that when Mr. McClure vacated the property, he left lots of junk. RP 221. Mr. Williams, the victim, also addressed this when he testified about the worrying accumulation of junk outside the house. RP 64. So much stuff had accumulated that Mr. Williams was worried about code enforcement. RP 65. Williams also discussed the rent that went unpaid prior to the eviction. PR 66-67. There was also considerable damage to the house that occurred before the Craigslist posting, presumably done by Mr. McClure given his subsequent conviction for Malicious Mischief in the 1st Degree. RP 70-74.

This case presents a fundamentally different question than the one at issue in *State v. Stockton*, the principle case that supports the Appellant's claim. In *Stockton*, there was never any property at issue, it related only to sex and accompanying the defendant to the psychologist. *State v. Stockton*, 97 Wn.2d 528, 530, 647 P.2d 21 (1982). Unlike *Stockton*, while there is a "letter" demanded in this case, the letter makes a demand that relates both to a potential criminal penalty and potential monetary restitution. While the "letter" could be considered a service, a

reasonable jury could find based on the evidence that the letter ultimately pertained to property in the form of repayment of debt or payment for damages.

This case presented facts that could satisfy the elements of coercion, but also had additional facts that satisfied the property requirements at issue in an extortion charge. Coercion is similar to extortion in that it requires a threat, but the difference is that coercion applies to conduct separate and apart from the taking of property or services. As presented in the statute, coercion requires a threat to compel or forego engaging in conduct related to exercising a legal right. RCW 9A.36.070. In this case, Mr. Williams certainly had a legal right to report the conduct to the police and attempt to “press charges,” which would be factually sufficient for coercion. However, Mr. Williams also had a considerable financial interest and the letter sought by Appellant could reasonably be inferred to prevent Mr. Williams from attempting to collect payment for the lost rent, as well as the damage to the property.

Because there are elements of property loss and the threat in this case would have had the ultimate effect of costing Mr. Williams property, it is more appropriately charged as extortion. As Appellant himself notes in his reference to *State v. Strong*, extortion as a charge is grounded in robbery and the taking of property. *State v. Strong*, 167 Wn.2d 206, 214, 272 P.3d 281 (2012). Here, there are two possible purposes for the threat, protection from legal liability for the conduct, and protection from

financial liability for the conduct. Because there is a significant financial/property component to the threat, it is appropriately treated as an extortion.

A reasonable jury could have taken the evidence as presented to mean that Appellant's threat was, in addition to avoiding prosecution, to avoid having to repay the financial losses incurred by Mr. Williams. A reasonable jury could conclude that Appellant was threatening Mr. Williams to avoid losing property, his own money, or having to repay debts. Taken in the light most favorable to the State, this is a reasonable inference drawn from the evidence presented. Because there is a reasonable inference drawn from the evidence presented that would support the jury's verdict, there was sufficient evidence and this court should affirm the Appellant's conviction for Extortion in the First Degree.


IV. CONCLUSION

There was sufficient evidence to support the Appellant's conviction for Extortion in the First Degree. While the facts as presented would also support a conviction for Coercion, because there was a financial and property component to the threat, and based on the evidence of such presented to the jury, a reasonable trier of fact could have found that Appellant's threat applied to property, as well as to the simply legal process of reporting a case to the police. There was sufficient evidence and we respectfully request this court affirm the verdict of the jury.

Respectfully submitted this 27th day of January, 2017.

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By:



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RCW 9A.36.070

Coercion.

(1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in *RCW 9A.01.020 (27) (a), (b), or (c).

(3) Coercion is a gross misdemeanor.

COWLITZ COUNTY PROSECUTOR

January 27, 2017 - 3:39 PM

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